

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**WEISER-BROWN OPERATING
COMPANY**

versus

**ST. PAUL SURPLUS LINES INSURANCE
COMPANY**

*** CIVIL ACTION
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* NO. 10-CV-02538
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* JURY REQUESTED

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JOINT PROPOSED FINAL JUDGMENT

On September 4, 2012, the date this trial began, Plaintiff Weiser-Brown Operating Company (“Weiser-Brown”), on behalf of itself and its non-operating interest owners, appeared and announced ready for trial. The Court determined that it had jurisdiction over the subject matter and the parties in this case. The Court then impaneled and swore in the jury, which heard the evidence and arguments of counsel. The Court submitted questions, definitions, and instructions [Docket Entry No. 95] to the jury regarding Weiser-Brown’s breach of contract claim against St. Paul Surplus Lines Insurance Company (“St. Paul”) on September 7, 2012, reserving to itself until after trial the claim for late payment penalty interest under the Texas Insurance Code and the beginning date for the application of pre-judgment interest. In response, the jury made findings that the Court received, filed, and entered of record [Docket Entry No. 111], which are hereby incorporated into the Final Judgment. Subsequently, the parties provided briefs and appeared in a May 23, 2013 hearing before the Court on the remaining issues. The Court issued Findings of Fact and Conclusions of Law concerning these remaining issues on June 14, 2013 [Docket Entry No. 128], which are hereby incorporated into the Final Judgment.

The Court, therefore, now renders judgment for Weiser-Brown on its breach of contract claim against St. Paul, awards Weiser-Brown interest and attorney fees under the Texas Insurance Code and the Texas Civil Practice & Remedies Code, awards costs under Fed. R. Civ. P. 54, and applies pre-judgment interest as follows:

1. The Court orders that Weiser-Brown recover the sum of \$2,290,457.03 and costs of court from St. Paul for breach of contract. St. Paul paid the \$2,290,457.03 in actual damages to Weiser Brown on November 16, 2012, “reserv[ing] the right to seek reimbursement.”
2. Pre-judgment interest under Texas Finance Code § 304.104 is awarded at the annual rate of 5% per year, beginning August 31, 2009, which is 180 days from Weiser-Brown’s written notice of the claim on March 4, 2009. The pre-judgment interest accrued 1,173 days until November 16, 2012, when St. Paul tendered the \$2,290,457.03 jury award. Accounting for settlement offers made by St. Paul and outstanding for 53 days during that period, the Court orders that Weiser-Brown recover a sum of \$362,514.45 in pre-judgment interest from St. Paul.

ALTERNATE #1:

3. Interest under § 542 of the Texas Insurance Code began accruing at a rate of 18% per year (\$1,129.54 per day) from November 21, 2009, which is the date St. Paul began violating § 542.056 of the Texas Insurance Code, until the date of this judgment. Because St. Paul only conditionally tendered actual damages to Weiser-Brown, the accrual of penalty interest continues. As of the date of submission of the proposed judgment (July 2, 2013), interest accrued for 1,319 days in the total amount of \$1,489,863.26. The Court orders that Weiser-Brown recover from St. Paul late-

payment interest under § 542 of the Texas Insurance Code in an amount calculated accordingly.

ALTERNATE #2:

3. Interest under § 542 of the Texas Insurance Code began accruing at a rate of 18% per year from November 21, 2009, which is the date St. Paul began violating § 542.056 of the Texas Insurance Code, at \$1,129.54 per day for 1,091 days, until November 16, 2012, the date that St. Paul paid the \$2,290,457.03 in actual damages to Weiser-Brown, subject to a right of reimbursement if St. Paul was successful in overturning the jury verdict. The Court orders that Weiser-Brown recover \$1,232,328.14 from St. Paul in late-payment interest under § 542 of the Texas Insurance Code.
4. Weiser-Brown is entitled to reasonable attorney's fees under § 542 of the Texas Insurance Code and Chapter 38 of the Texas Practice and Remedies Code. The Court orders that Weiser-Brown recover a sum of \$1,107,900 in attorney's fees, an amount to which the parties have stipulated is reasonable.
5. Pursuant to Fed. R. Civ. P. 54, the Court orders that Weiser-Brown recover \$34,991 in additional costs, an amount to which the parties have stipulated is reasonable.

This judgment is final and appealable.

The Court orders execution to issue for this judgment.

The Court directs the clerk to enter this FINAL JUDGMENT for Weiser-Brown's breach of contract claim.

Signed at Houston, Texas, this _____ day of July, 2013.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM & SUBSTANCE:

/s/ Paul Matthew Jones (EJN by permission)

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¹ By agreeing to the form of the judgment, St. Paul does not intend to waive any argument it may have on appeal regarding its liability for the interest awarded under §542 of the Texas Insurance Code.